

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

NORTH CAROLINA STATE
CONFERENCE OF THE NAACP,
EMMANUEL BAPTIST CHURCH, NEW
OXLEY HILL BAPTIST CHURCH,
BETHEL A. BAPTIST CHURCH,
COVENANT PRESBYTERIAN CHURCH,
CLINTON TABERNACLE AME ZION
CHURCH, BARBEE'S CHAPEL
MISSIONARY BAPTIST CHURCH, INC.,
ROSANELL EATON, ARMENTA EATON,
CAROLYN COLEMAN, BAHEEYAH
MADANY, JOCELYN FERGUSON-
KELLY, FAITH JACKSON, AND MARY
PERRY,

Plaintiffs,

v.

PATRICK LLOYD MCCRORY, in his
official capacity as the Governor of North
Carolina, KIM WESTBROOK STRACH, in
her official capacity as Executive Director of
the North Carolina State Board of Elections,
JOSHUA B. HOWARD, in his official
capacity as Chairman of the North Carolina
State Board of Elections, RHONDA K.
AMOROSO, in her official capacity as
Secretary of the North Carolina State Board
of Elections, JOSHUA D. MALCOLM, in his
official capacity as a member of the North
Carolina State Board of Elections, PAUL J.
FOLEY, in his official capacity as a member
of the North Carolina State Board of Elections
and MAJA KRICKER, in her official capacity
as a member of the North Carolina State
Board of Elections,

Defendants.

Civil Action No. 1:13-CV-658

LEAGUE OF WOMEN VOTERS OF
NORTH CAROLINA, A. PHILIP
RANDOLPH INSTITUTE, UNIFOUR
ONESTOP COLLABORATIVE, COMMON
CAUSE NORTH CAROLINA, GOLDIE
WELLS, KAY BRANDON, OCTAVIA
RAINEY, SARA STOHLER, and HUGH
STOHLER,

Plaintiffs,

v.

THE STATE OF NORTH CAROLINA,
JOSHUA B. HOWARD in his official
capacity as a member of the State Board of
Elections, RHONDA K. AMOROSO in her
official capacity as a member of the State
Board of Elections, JOSHUA D. MALCOLM
in his official capacity as a member of the
State Board of Elections, PAUL J. FOLEY in
his official capacity as a member of the State
Board of Elections, MAJA KRICKER in her
official capacity as a member of the State
Board of Elections, and PATRICK L.
MCCRORY in his official capacity as
Governor of the state of North Carolina,

Defendants.

Civil Action No. 1:13-CV-660

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE STATE OF NORTH CAROLINA; THE
NORTH CAROLINA STATE BOARD OF
ELECTIONS; and KIM W. STRACH, in her
official capacity as Executive Director of the
North Carolina State Board of Elections,

Civil Action No. 1:13-CV-861

Defendants.

**DEFENDANTS' MOTION REGARDING ORDER ON
ELECTRONICALLY STORED DOCUMENTS AND EMERGENCY REQUEST
FOR BRIEFING SCHEDULE**

On December 19, 2013, plaintiffs have or will be filing a proposed order regarding electronically stored information. The parties reached agreement on all of the terms and conditions in plaintiffs' proposed order except as follows.

1. In the section of plaintiffs' proposed order labeled "A. Provisions for the Production of Documents and ESI", defendants propose a new paragraph 9A which states:

9A. Documents created after August 12, 2013 are presumed to be unresponsive and not relevant. To the extent any party contends that documents created after August 12, 2013 are relevant to their claims, the parties shall meet and confer regarding these contentions. Upon a failure of the parties to agree, the party seeking discovery may move to compel the production of documents created after August 12, 2013, and such documents shall be produced upon a finding by the court that such documents are not privileged and are relevant or may lead to relevant information.

2. Defendants propose the following language for paragraph 33 of plaintiffs' proposed order:

33. The parties shall provide sufficient information in privilege logs to establish the elements of each asserted privilege. *See, e.g., Kelly v. United States*, 281 F.R.D. 270, 277 (E.D. N.C. 2012). However, for documents created in connection with this litigation, the parties need not produce a privilege log for any privileged or protected documents that were created or exchanged by:

- (a) attorneys or staff of the United States Department of Justice;
- (b) attorneys or staff of the United States Department of Justice and other federal agencies;
- (c) attorneys or staff of the Office of the North Carolina Attorney General, its co-counsel Ogletree Deakins and its staff, counsel for the Speaker of the North Carolina House of Representatives (“Speaker”), counsel for the President Pro Tem of the North Carolina Senate (“President Pro Tem”), and counsel for defendant McCrory and his staff; and
- (d) counsel for the plaintiffs and their staff and co-counsel and their staffs.

33A The parties agree that for documents created after August 12, 2013, in connection with this litigation, the parties need not produce a privilege log for any privileged or protected documents that were created or exchanged by:

- (a) attorneys or staff of the Office of the North Carolina Attorney General and its co-counsel Ogletree Deakins, and its staff, counsel

for the Speaker, counsel for the President Pro Tem, and counsel for defendant McCrory and his staff and any of the defendants in the case including the State of North Carolina and all of its agencies and officials;

(b) counsel for the plaintiffs (including the United States Department of Justice) and their staff, plaintiffs' co-counsel and their staffs and any of the plaintiffs, including the organizational plaintiffs and their officers, employees, and agents.

33B No privilege log shall be required for any documents created prior to or after August 12, 2013, in the possession, custody or control of members of the General Assembly and their staff or legislative employees that are covered by legislative privilege, legislative immunity, or legislative confidentiality.

3. Defendants propose that paragraph 40 of plaintiffs' proposed order be deleted.

4. Briefing Schedule

The parties agree that briefing is necessary on the issues raised by the parties' disagreement regarding the ESI order. Defendants propose the following briefing schedule:

(a) Opening briefs from all parties shall be due on December 30, 2013, with reply briefs due on January 6, 2014.

(b) In the alternative, defendants' opening brief shall be due on December 30, 2013, plaintiffs' response briefing shall be due on January 6, 2014, and defendants' reply brief shall be due on January 9, 2014.

Dated: December 19, 2013

Respectfully submitted,

***For the North Carolina & North Carolina State
Board of Elections Defendants:***

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CERTIFICATE OF SERVICE

I, Thomas A. Farr, hereby certify that I have this day electronically filed the foregoing **Defendants' Motion Regarding Order On Electronically Stored Documents and Emergency Request for Briefing Schedule** with the Clerk of Court using the CM/ECF system which will provide electronic notification of the same to the following:

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This the 19th day of December, 2013.

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